IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/01/2004

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THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.608 of 1999 and W.P.No.635 of 1999

In W.P.No.608 of 1999

1. Union of india,
Chairman, Telecom Commission,
Ministry of Communications,
Sanchar Bhavan,
20, Ashoka Road,
New Delhi 110 001.

2. Asst. Director General (SGT),
Department of Telecommunications,
Ministry of Communications,
Govt. of India, Sanchar Bhavan,
20, Ashoka Road,
New Delhi 110 001. ..Petitioners

-vs-

1. Honble Central Administrative Tribunal
through its Registrar,
Madras Bench,
High Court Buildings,
Chennai-600 104.

2. V.Narayanan
3. J.Rajasekaran
4. S.Sampath
5. C.Mahalingam
6. H.Thilagar Jayasingh
7. K.Ramarathnam
8. S.Valmiki
9. S.Kannappan
10.S.Lakshminarasimhan ..Respondents

In W.P.No.635 of 1999

1. Union of India,
rep. By its Secretary,
Ministry of Communications,
Sanchar Bhavan,
No.20, Ashoka Road, New Delhi-1.

2. The Director-eneral,
Department of Telecommunications,
Sanchar Bhavan,
No.20, Ashoka Road,
New Delhi 110 001. ..Petitioners

-vs-

1. Central Administrative Tribunal,
rep. By its Registrar,
Madras Bench.

2. R.Venkataraman
3. T.Parthasarathy
4. R.muralidharan
5. V.Annamalai
6. V.K.balasubramanian
7. N.Susheela
8. V.Ramakrishnan
9. G.Thyagarajan Samuel
10.K.Venkateswaran
11.S.balakrishnan
12.M.K.Ramabhadran
13.R.Sundaramurthy
14.S.Chandrasekhar ..Respondents

Petitions filed under Art.226 of the Constitution of India, praying for the issue of writ of certiorari as stated therein.

!For Petitioners
in both W.Ps. : Mr.V.T.Gopalan,
Addl. Solicitor General
assisted by
Mr.Vanathi Srinivasan,
Addl. Central Governemnt
Standing Counsel.

^For RR-2 to 10
in W.P.608/99 : Mr.C.K.Chandrasekar,
for M/s Row and Reddy

For RR-2,3,5,6
and 8 to 14
in W.P.No.635/99 : Mr.V.Bhiman

For RR-4 and 7 : No appearance

:ORDER

(The order of the Court was made by R.JAYASIMHA BABU, J.)
Numerous proceedings in relation to the determination of the seniority of Junior Engineers, before different Benches of the Central Administrative Tribunals, various High Courts and, on several occasions, before the Supreme Court during a period of over 10 to 15 years, with regard to the interpretation and application of the instructions issued by the Government of India, Department of Communications, on 28.6.1966, in Appendix I, Para (v), which paragraph is extracted below, culminated in the decision rendered by a three Judge Bench of the Supreme Court in the case of Union of India v. Madras Telephone SC & ST Social Welfare Association (2000) 9 SCC 71, wherein the Court declared that "the question of seniority in the feeder cadre of Junior Engineers, when persons belonging to the same recruitment year are recommended, has to be decided in accordance with paragraph (iii) of the memorandum dated 28.6.1966 and in accordance with the statutory Recruitment Rules read with the appendix attached thereto for promotion to the posts in Group 'B' service. A separate list has to be made in respect of each recruitment year".

2. Para (v) referred to in the previous paragraph reads as under:-

"All officials of a particular year of recruitment/appointment, who have qualified in an earlier examination would rank en-bloc senior to those officials of the same year of recruitment/appointment, who qualified in subsequent examination."

3. A bench of the Central Administrative Tribunal at Allahabad had, on an application filed by two Junior Engineers, Paramanand Lal and Brij Mohan, interpreted this paragraph as requiring the Department to rank all those who passed the qualifying examination above those who passed the same examination at a later point of time, without reference to the year in which they had been recruited. That decision was affirmed by the Allahabad High Court and a Special Leave Petition against that Judgment was rejected by the Supreme Court. Thereafter, there were numerous proceedings before various Benches of the Tribunal, claiming relief similar to the one that had been granted to Parmanand Lal and Brij Mohan. One such proceeding went up to the Supreme Court which, in the case of Union of India v. Madras Telephones Scheduled Castes and Scheduled Tribes Social Welfare Association (1997) 10 SCC 226, in which it was held that "the eligibility list has to be prepared according to the year of recruitment/appointment and neither according to the year of passing of the examination nor with reference to the year of confirmation."

4. The matter was thereafter brought before a three Judge Bench, as there was a conflict between the judgment rendered by the two Judge Bench of the Supreme Court and the law that had been laid down by the Allahabad High Court against which the Supreme Court had declined to grant Special Leave.

After a comprehensive and in-depth examination of the proceedings that had gone on prior to t he pronouncement of the judgment, on 26th April, 2000, the three Judge Bench held that separate list had to be prepared for each year of recruitment in the feeder category. Within the list so prepared for each year, persons who passed the eligibility test are to be ranked higher to those who passed the same test later, even though they may have been ranked seniors earlier.

5. The Court, however, while laying down the law in those terms, did not deprive Parmanand Lal and Brij Mohan of the benefit which they had derived by virtue of the judgment of the Allahabad High Court, which had interpreted the Rule in a different manner and had directed that Paramanand Lal and Brij Mohan be treated as seniors even to those who had been recruited in earlier years, solely by taking the date on which they passed the eligibility test as the decisive factor for determining seniority.

6. At the end of paragraph 17 of the judgment, the Court made the following observation:-

"We, however, make it clear that the persons who have already got the benefit like Parmanand Lal and Brij Mohan by virtue of the judgments in their favour, will not suffer and their promotion already made will not be affected by this judgment of ours."

By the same judgment, the Court, at paragraph 19, allowed the appeal that had been preferred by Parmanand Lal against his reversion--a reversion which had been effected after the decision of the Supreme Court in the year 1997--to which we have already made a reference earlier. The three Judge Bench was of the view that a benefit which had been granted to Lal, as a result of a judgment by which the State was bound, could not be taken away by reason of a judgment pronounced later in other proceedings though that judgment interpreted the very Rule in a different manner.

7. The respondents before us in these writ petitions, who were applicants before the Tribunal, contend that the observation of the Court at the end of paragraph 17, which we have extracted above, enables them to claim seniority over Parmanand Lal and Brij Mohan, as, admittedly, Lal and Brij Mohan are juniors to them. They also relied upon the fact that in the year 1992 they had also filed an application before the Madras Bench of the Central Administrative Tribunal claiming a relief similar to that granted to Parmanand Lal and Brij Mohan, as they had passed the eligibility test before Lal and Brij Mohan had. The Tribunal, on that application, had directed that the

petitioners before it be given the benefit similar to that which had been granted by the Allahabad Bench, whose decision had been affirmed by the Allahabad High Court.

8. Thereafter, the petitioners before the Tribunal were granted promotion with effect from the year 1980, some of them having been given promotion with effect from the year 1981 and their seniority was also fixed

with reference to those years. The respondents before us, being aggrieved by that, filed a contempt petition which was rejected by the Tribunal observing that as to whether or not the petitioners have been given the correct ranking in the seniority list was a matter to be decided in independent proceedings and not in the contempt petition.

9. The impugned order of the Tribunal is one which was rendered by the Tribunal on the further application which the respondents before us filed soon after the dismissal of the contempt application.

10. Learned counsel for these respondents submitted before us vigorously that they should be accorded the same treatment as Parmanand Lal and Brij Mohan and that they should be ranked higher to Lal and Brij Mohan, who were not only their juniors but are also persons who had passed the eligibility test at a later point of time. It was submitted by counsel that the principles of res judicata are attracted. In support of that submission, counsel invited our attention to the decisions of the Supreme Court in the cases of Supreme Court Employees Welfare Association v. Union of India (1989) 4 SCC 187; Union of India v. Madras Telephones Scheduled Castes and Scheduled Tribes Social Welfare Association (1997) 10 SCC 226; and Union of India and others v. Southern Railway Employees Co-operative Stores Workmen Union and others (1998) 5 SCC 530.

11. The principles of res judicata are not attracted in this case, as the matter is now squarely governed by the decision of the Supreme Court in the case of Union of India v. Madras Telephone SC & ST Social Welfare Association (2000) 9 SCC 71. The Court therein considered the cases of all persons affected by the application of this rule and carved out an exception only in favour of certain persons, after having laid down the law and enabled those persons to retain the benefit if such benefit had been received prior to the judgment of the three judge Bench.

12. The class which could claim seniority contrary to the law laid down by the Supreme Court in that case are persons who had received promotion like Parmanand Lal and Brij Mohan. The implication clearly is that if such promotion had not been given it could not be done subsequent to the date of the judgment of the Supreme Court.

13. It is no doubt true, as contended by learned counsel for the respondents, that the Tribunal had in fact directed the Union to grant to the petitioners before the Tribunal the same benefits as had been granted to the petitioners before the Allahabad Bench of the Tribunal, whose decision had been affirmed by the Allahabad High Court. Subsequent to that ruling, the seniority given to the petitioners was in fact revised and further promotions given to them on the basis of that seniority. The reference to 'benefit' in the last sentence of paragraph 17 of the judgment of the Supreme Court is to be understood as the benefit actually given and is not to be equated to a direction given by the Tribunal to follow a judgment rendered by the Allahabad Bench and affirmed the Allahabad High Court. It is the admitted case of the petitioners before the Tribunal that they had not received any such benefit although it was their claim that they were entitled to such benefit.

14. After the decision rendered by the three Judge Bench, there is no scope whatsoever now for the respondents before us to claim a benefit contrary to the law laid down in that judgment as they had not received such a benefit prior to that judgment. It is not open to this Court to direct the State to act contrary to the law laid down by the Supreme Court. Even though the respondents before us were not parties to that judgment, the law declared by the Court binds them as well.

15. The respondents before us, therefore, cannot claim seniority solely on the basis of the year in which they passed the eligibility test without reference to the year of recruitment of persons who had qualified by passing the test, but at a later point of time. As held by the two Judge Bench in the case of Union of India v. Madras Telephones Scheduled Castes and Scheduled Tribes Social Welfare Association (1997) 10 SCC 226, which judgment was affirmed by the three Judge Bench later, the year of recruitment is the relevant year and it is only among those recruited in the same year persons who passed the qualifying test earlier will rank senior to those who passed the test later. The seniority acquired by the employees who had entered service earlier is not in any way affected vis-a-vis those who entered the service in later years.

16. Although the judgment rendered by the three judge Bench does not specifically refer to a situation where a person who had entered service earlier passes the eligibility test years later and before his passing that eligibility test, persons recruited in later years who had passed the eligibility test earlier are promoted, it would appear reasonable to take the view that such a person will necessarily rank junior in the higher cadre as he would be entering that higher cadre only later, after persons who had entered service in the lower cadre in a later year had entered that higher cadre by virtue of having passed the eligibility test earlier and having been selected to fill a vacancy which was then available.

17. The direction given by the Tribunal in the impugned order directing the Union to grant notional seniority and monetary benefits to the petitioners before it by taking the year of their passing the eligibility test as the criterion for determining seniority cannot be sustained, as that direction is not in accordance with the law laid down by the Supreme Court in the case of Union of India v. Madras Telephone SC & ST Social Welfare Association (2000) 9 SCC 71.

18. We, however, make it clear that we have not dealt with the seniority properly assignable to the petitioners before the Tribunal in the light of the principles laid down by the Supreme Court in that judgment, although it was submitted before us by the learned Additional Solicitor General that a seniority list has in fact been prepared in accordance with that judgment and that the seniority that had been assigned to the petitioners earlier has remained undisturbed even after the new seniority list was drawn up.

19. The writ petitions are allowed. The impugned order of the Tribunal is set aside.

To

The Registrar,
Central Administrative Tribunal,
High Court Buildings,
Madras-600 104.

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